



attached thereto; and (3) heard and considered arguments by counsel for the Parties in favor of preliminary approval of the Settlement and preliminary certification of the Class (defined below) for purposes of the Settlement;

WHEREAS, the Court finds, upon a preliminary evaluation, that the proposed Settlement falls within the range of possible approval criteria, as it provides a beneficial result for the Class and appears to be the product of good-faith, informed, and non-collusive negotiations between experienced and able counsel for the Parties; and

WHEREAS, the Court also finds, upon a preliminary evaluation, that the Class should be apprised of the Settlement through the proposed form of Notice and Summary Notice, allowed to (i) file objections, if any, thereto, (ii) opt-out of the Class if any member so desires, and (iii) appear at the Final Approval Hearing (defined below).

NOW, THEREFORE, UPON GOOD CAUSE SHOWN, IT IS HEREBY ORDERED as follows:

All capitalized terms used in this Order that are not otherwise defined herein have the meanings defined in the Settlement Agreement.

1. Pursuant to Rule 42(b)(1) of the Texas Rules of Civil Procedure, the Court certifies, for the purposes of this Settlement only, the following class comprising of:

All patients treated at a facility operated by Baptist Neighborhood Hospital (formerly Baptist Emergency Hospital) between September 25, 2016 and January 27, 2023, for whom one or more of the Current Panels was ordered and performed, and the patient was billed some Patient Responsibility for, at least one of the Current Panels (the “Class”).

The following are excluded from the Class:

- (i) Defendants and their respective parents, subsidiaries, representatives, officers, directors, partners, and co-ventures;
- (ii) Persons who have validly exercised their right to Opt Out pursuant to Paragraph 8 of the Settlement Agreement.

2. The Court preliminarily approves Plaintiff Kenneth Keslar II as the representative for the Class (“Class Representative”).

3. Having considered the factors described in Rule 42(g)(1) of the Texas Rules of Civil Procedure, the Court hereby preliminary appoints Wolf Popper LLP as “Class Counsel” and Hilder & Associates P.C. as “Liaison Counsel” for the Class (together referred to as “Plaintiff’s Counsel”).

4. With respect to the Class, this Court finds and concludes that: (i) the members of the Class contemplated in the Action are so numerous that joinder of all members is impracticable; (ii) questions of law and fact are common to the Class; (iii) the claims and defenses of the proposed Class Representative, Mr. Keslar, are typical of the claims and defenses of the Class; and (iv) the Class Representative will fairly and adequately represent the interests of the Class.

5. The Court finds that that the prerequisites for maintaining a class action under Rule 42(b)(3) of the Texas Rules of Civil Procedure have been preliminarily satisfied for the Class.

6. The Court finds that the Settlement appears to be within a range of fairness, reasonableness, and adequacy that is sufficient to warrant (i) sending out notice thereof to the Class Members as set forth below; and (ii) a full hearing on the Settlement. Accordingly, the Court hereby preliminarily approves the Settlement subject to further consideration at the Final Approval Hearing described below.

7. This Court will hold a settlement hearing (“Final Approval Hearing”) at 8:30 a.m., on May 10, 2023, at the District Court, Bexar County, <sup>MONITORING</sup> ~~73rd Judicial District~~, Bexar County Courthouse, 100 Dolorosa, San Antonio, Texas 78205, <sup>for assignment to a District Court</sup> to determine whether (i) the proposed Settlement is fair, reasonable and adequate to the Class and should be approved by the Court; (ii) Plaintiff’s Counsel Fees and Expenses and the payment of a Class Representative Award, as contemplated in the Settlement Agreement, should be approved; and (iii) a Final Order and Judgment should be entered into. The Final Approval Hearing may be adjourned, from time to time, by order of this Court without further notice to the Class.

8. The Court approves, as to form and content, the Notice of Proposed Class Action Settlement (“Notice”), annexed as Exhibit B to the Settlement Agreement, and finds that the mailing and distribution of the Summary Notice, substantially in the form attached as Exhibit C to the Settlement Agreement, which will direct Class Members to a settlement website which will have the Notice and other important documents available for view by Class Members, meets the requirements of Rule 42 of the Texas Rules of Civil Procedure and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

9. Defendants are authorized to retain RG/2 Claims Administration LLC (“Settlement Administrator”), to supervise and administer the notice procedure in connection with the proposed Settlement as well as the processing of Class Member claims for payment as more fully set forth below:

- a. Within ten (10) business days after the Court enters the Preliminary Approval Order, Defendants will provide a notice database in an electronically searchable and readable format to the Settlement Administrator, which includes the names and last known mailing addresses, and, if known or reasonably practicable to obtain, telephone numbers and email addresses, for all Class Members;
- b. Within ten (10) business days after the Settlement Administrator’s receipt of the Notice database from Defendants, the Settlement Administrator will, by first class mail, send the Summary Notice to each Class Member (“Notice Date”);
- c. Before Summary Notice is mailed to the Class Members, the Settlement Administrator shall create and maintain a settlement website which will contain, at a minimum, the Petition, the Settlement Agreement, a complete copy of the Notice, this Preliminary Approval Order, and the Claim Form. The settlement website shall remain active until ninety (90) days after the Claim Submission Deadline;
- d. The Claim Submission Deadline will be no later than one hundred and eighty-

five (185) days after the Notice Date; and

- e. No later than ten (10) days prior to the Final Approval Hearing, Plaintiff's Counsel shall file with the Court declarations prepared by the Settlement Administrator confirming that Notice has been provided to the Class Members in accordance with the Settlement Agreement and that the Settlement Administrator has complied with the provisions of this Preliminary Approval Order.

10. Defendants shall pay all reasonable costs and expenses in providing notice to the Class.

11. All Class Members shall be bound by all determinations and judgments in this Action concerning the Settlement, whether favorable or not to the Class.

12. Any Class Member can, but does not have to, enter an appearance in this Action, at their own expense, individually, or through counsel of their choice. If they do not enter an appearance, they will be represented by Plaintiff's Counsel.

13. All proceedings in this Action, other than those necessary to effectuate the Settlement, shall hereby be stayed until the Effective Date of the Settlement.

14. The Court will consider any objections to the Settlement including the Plaintiff's Counsel Fees and Expenses and the Class Representative Service Award only if such objections are in writing and delivered to the Court, on or before \_\_\_\_\_, 2023. The objections must contain the following information: the name and case number of this lawsuit (*Kenneth Keslar II v. Emerus / BHS Thousand Oaks LLC et. al.*, Case No. 2020-CI-18623); full name of the Class Member objecting, and that Class Member's mailing address, and email address or telephone number; what specifically the Class Member does not like about the Settlement or any part of it and reasons why; and a copy of the Class Member's bill that demonstrates that he/she is a member of the Class. Copies of any such objections and accompanying documentation must also be mailed by first-class mail, no later than \_\_\_\_\_, 2023, to:

**Class Counsel:** Chet Waldman, Esq., Wolf Popper LLP, 845 Third Avenue, New York, NY 10022

**Defendants' Counsel:** Kevin McGinty, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111

15. Any Class Member who does not make his/her objection in the manner provided shall be deemed to have waived such objection and shall forever be barred from making any objection to the fairness or adequacy of the proposed Settlement as incorporated in the Settlement Agreement unless otherwise ordered by the Court.

16. No later than ten (10) business days before the Final Approval Hearing, Plaintiff will file with the Court an assented-to Final Approval Motion in Support of the Settlement, Plaintiff's Counsel Fees and Expenses, and Class Representative Award; and a reply brief responding to any objections or Opt Outs, if any.

17. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendants of the truth of any of the allegations in the Action, or of any liability, fault or wrongdoing of any kind, in this case or in any litigation in any jurisdiction, or against Plaintiff or any Class Member that their claims are without merit.

18. The Court retains exclusive jurisdiction over this Action, the Plaintiff, and Defendants to consider all further matters arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with modifications, as may be agreed to by the Parties, if appropriate, without further notice to the Class.

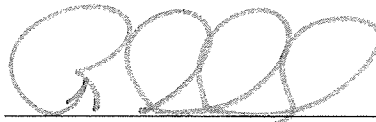
19. The Court reserves the authority to enter its Final Order and Judgment approving the Settlement and dismiss the Action with prejudice regardless of whether it has awarded attorneys' fees and expenses.

20. If the Settlement provided for in the Settlement Agreement is not approved by the Court for any reason or if the Final Order and Judgment is not entered for any reason, the Settlement Agreement shall be null and void and of no force and effect. In such an event, the

Settlement Agreement shall not be deemed to prejudice in any way the respective positions of the Parties with respect to the Action, and neither the existence of the Settlement Agreement nor its contents shall be admissible in evidence or shall be referred to for any purpose in the Action or in any other litigation proceeding.

IT IS SO ORDERED

Signed this 17 day of February, 2023.



JUDGE PRESIDING

**APPROVED AS TO FORM:**

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